

## REMARKS

Applicant has amended claims 1, 2, 5-7 and 17-20. Claims 9-16 have been canceled. New claims 21-24 have been added. These changes have been made to place the claims in better form for examination and to further obviate the 35 U.S.C. §102(b) and 112 rejections as set forth in the Office Action dated October 22, 2004. It is believed none of these amendments constitute new matter. It is submitted that these amendments obviate the rejections. Withdrawal of these rejections is respectfully requested.

The Examiner has objected to claims 1, 2, 7, 12, and 14 for inclusion of blank lines. Applicant has amended claims 1, 2 and 7 to include the ATCC Accession Number and has canceled claims 12 and 14.

The Examiner has rejected claims 1-20 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Applicant has deposited 2500 seeds with the American Type Culture Collection. The date of deposit is August 31, 2004 and the ATCC Accession Number for the deposit is PTA-6180. Additionally, the undersigned avers that:

- a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;
- d) the viability of the biological material at the time of deposit was tested; and
- e) the deposit will be replaced if it should ever become inviable or when requested by ATCC.

Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 7, 9-11, 13-15 and 18-20 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicant

has amended claims 7 and 18-20 and canceled claims 9-11 and 13-15. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 7, 9-11, 13-15, and 18-20 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant has amended claims 7 and 18-20 and canceled claims 9-11 and 13-15. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 7, 16, and 19 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner has rejected claim 7 as being indefinite because "is capable of expressing" does not clearly recite whether or not the characteristics are actually expressed. Applicant has amended claim 7 as suggested by the Examiner. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 16 and 19 as being indefinite because the phrase "transgene is selected from the group consisting of: herbicide resistance, insect resistance, and disease resistance" is confusing. Applicant has canceled claim 16 and amended claim 19 as suggested by the Examiner. Withdrawal of this rejection is respectfully requested.

The Examiner has additionally rejected claim 16 as being indefinite in its recitation of "the cotton plant, or parts thereof, of claim 2, wherein the plant or parts thereof [has] been transformed." Applicant has canceled claim 16. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claim 15 under 35 U.S.C. §102(b) as being anticipated by Gutierrez et al (Crop Sci. 42: 1841-1847, 2002). Applicant has canceled claim 15. Withdrawal of this rejection is respectfully requested.

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§102(b) and 112. Reconsideration of this application and early notice of allowance is requested.

**Application No. 10/657,316**

**Amendment dated December 13, 2004**

**Reply to Office Action dated October 22, 2004**

**Page 8**

|                                 |   |                  |              |                   |              |
|---------------------------------|---|------------------|--------------|-------------------|--------------|
| <b>RESPECTFULLY SUBMITTED,</b>  |   |                  |              |                   |              |
| <b>NAME AND<br/>REG. NUMBER</b> | Kenyon L. Schuett, Reg. No. 44,324  |                  |              |                   |              |
| <b>SIGNATURE</b>                |  |                  | <b>DATE</b>  | December 13, 2004 |              |
| <b>Address</b>                  | Jondle & Associates P.C.<br>Suite 200, 9085 East Mineral Circle                   |                  |              |                   |              |
| <b>City</b>                     | Centennial  | <b>State</b>     | CO           | <b>Zip Code</b>   | 80112        |
| <b>Country</b>                  | U.S.A.  | <b>Telephone</b> | 303-799-6444 | <b>Fax</b>        | 303-799-6898 |